

Decision **PROPOSED DECISION OF ALJ VIETH** (Mailed 6/19/2015)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company; Notice of Opportunity for Hearing; and Order to Show Cause Why the Commission Should Not Impose Fines and Sanctions for the June 19, 2012 Incident at the Kern Power Plant.

Investigation 14-08-022  
(Filed August 28, 2014)

**DECISION APPROVING SETTLEMENT**

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**DECISION APPROVING SETTLEMENT****Summary**

We review and approve an all-party settlement of this Commission-ordered investigation into a 2012 fatality at the decommissioned Kern Power Plant. The accident occurred during demolition of an unused fuel oil tank by a subcontractor of Pacific Gas and Electric Company (PG&E). The settling parties are staff from the Commission's Safety and Enforcement Division, PG&E, and Bayview/Hunters Point Community Legal. The settlement requires PG&E to implement, on a company-wide basis, a Corrective Action Plan that includes a Contractor Safety Program and an Enterprise Causal Evaluation Standard. In addition, the settlement imposes penalties on PG&E shareholders totaling \$5,569,313. These penalties consist of \$3,269,313 in ratemaking offsets that benefit customers and \$2,300,000 in fines payable to the state's General Fund. The parties have met their burden to establish that the settlement is reasonable in light of the record, consistent with law and Commission precedent, and in the public interest.

**1. Background**

A tragic accident occurred on June 19, 2012 at the decommissioned Kern Power Plant owned by Pacific Gas and Electric Company (PG&E). During demolition of an unused fuel oil tank by a PG&E subcontractor, a construction worker was injured and subsequently died of those injuries.

The Commission issued this *Order Instituting Investigation, Order to Show Cause and Notice of Hearing* (OII) on August 28, 2014, based on an investigation and report by the Electric Safety and Reliability Branch (ESRB) of the

Commission's Safety and Enforcement Division (SED).<sup>1</sup> The OII seeks to assess PG&E's liability for the accident at the Kern Power Plant and to determine all appropriate remedies, including corrective action designed to minimize or prevent reoccurrence.

## **2. Procedural Issues**

Following the issuance of the OII, the assigned Administrative Law Judge (ALJ) set a prehearing conference (PHC) for September 24, 2014. The PHC was held as scheduled. The assigned Commissioner attended and voiced his concern about the accident and his view that PG&E should review its practices on a company-wide basis. PG&E and SED announced that they had met and conferred a few days earlier and had agreed to explore settlement. The assigned Commissioner and ALJ granted the parties' request to be allowed additional time for settlement discussions and directed them to serve a joint, procedural status report by e-mail on November 3, 2014.

On October 1, 2014, Bayview/Hunters Point Community Legal (BHP Community Legal) filed a motion requesting party status and concurrently filed a notice of intent to claim intervenor compensation (NOI). The motion was unopposed and by e-mail ruling filed October 20, 2014, the ALJ granted party status with leave to participate within the scope and schedule.

On November 3, PG&E and ESRB e-mailed their status report to the ALJ and service list. The status report included a detailed proposal for continuing negotiations, identifying milestone dates and corresponding activities. On

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<sup>1</sup> ESRB filed a public version of its report in this docket on September 5, 2014. The report is entitled *Investigation Report of the June 19, 2012 Fatality at the Kern Power Plant Owned by Pacific Gas and Electric Company* (referred to in this scoping memo as ESRB Report or Report).

November 19, 2014, the assigned Commissioner filed a scoping memo, which set forth the scope, schedule, and other matters pursuant to Pub. Util. Code §1701.1(b) and Rule 7.3(a) of the Commission's Rules of Practice and Procedure (Rules). Among other things, the scoping memo identified the ESRB Report as Exhibit ESRB-1, received the Report in evidence, and directed the parties to serve an additional, joint status report by e-mail no later than December 5, 2014. On December 4, the parties e-mailed the second status report to the ALJ and service list. The status report stated that during December 2014 the parties would notice and hold a settlement conference under Rule 12.1(b) of the Rules. On December 9, 2014, the ALJ filed a ruling on BHP Community Legal's NOI.

Thereafter, SED, PG&E and BHP Community Legal executed a settlement and, on February 11, 2015, jointly filed a motion requesting approval of the settlement agreement they attached as Appendix A to their motion.<sup>2</sup> By ruling filed on March 23, 2015, the ALJ directed the parties to amend their motion to explain how the settlement complies with Commission precedent for evaluating penalty proposals. On April 10, 2015, the parties timely filed an amendment.

### **3. Standard for Review**

Rule 12.1(d) of the Commission's Rules sets forth the standard for approval of settlements and governs our review here: "The Commission will not approve settlements, whether contested or uncontested, unless the settlement is

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<sup>2</sup> The settling parties' motion reports that SED and the Division of Occupational Safety and Health of the California Department of Industrial Relations (known as Cal/OSHA) also are investigating a 2013 incident at the Kern Power Plant, which is not at issue in this OII. That separate incident, on August 3, 2013, concerns injury to several members of the public during the scheduled implosion of steam boilers. The motion states Cal/OSHA "cited the independent contractor for violations of Cal/OSHA standards and did not cite PG&E." (*Motion of the Settling Parties for Approval of Settlement Agreement* [February 11 Joint Motion] at 3, footnote 1.)

reasonable in light of the whole record, consistent with law, and in the public interest.”

If a settlement requires payment of a penalty, the Commission has examined the reasonableness of the penalty provisions against criteria adopted in Decision (D.) 98-12-075: (1) physical harm; (2) economic harm; (3) harm to the regulatory process; (4) the number and scope of violations; (5) the utility’s actions to prevent a violation; (6) the utility’s actions to detect a violation; (7) the utility’s actions to disclose and rectify a violation; (8) the need for deterrence; (9) constitutional limit on excessive fines; (10) the degree of wrongdoing; (11) the public interest; and (12) consistency with precedent. (*See* D.98-12-075, 84 CPUC 2d at 188-190, recently applied in D.14-08-009.<sup>3</sup>)

#### **4. Discussion**

##### **4.1. Overview**

The assigned Commissioner’s scoping memo affirms the following six issues for review, the same issues originally identified in the OII’s preliminary scoping memo:

- PG&E’s role in the June 2012 incident;
- PG&E’s compliance with state laws, general orders, regulations and rules including, without limitation, Public Utilities Code Section 451;
- Whether any of PG&E’s acts or omissions contributed to the incident;

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<sup>3</sup> D.14-08-009 approved settlements between SED and Southern California Edison Company (SCE) in two incidents involving electrical equipment failures, referred to as the “Acacia Avenue triple electrocution incident in San Bernardino County” and the “2011 Windstorm.” The settlements require SCE shareholder payments of \$24.5 million, total, consisting of \$15 million in fines and \$9.5 million in meaningful remediation.

- What actions PG&E has taken, or should take, to prevent another incident from occurring;
- The necessary breadth of those actions, including whether they should be area-specific or system-wide; and
- Any fines or penalties that the Commission believes should be imposed on PG&E for any possible violations that are proven as a result of this investigation. (Scoping memo at 2-3, quoting OII at 6.)

The February 11 joint motion asserts that the all-party settlement reasonably resolves each of these issues and asks us to find the settlement is in the public interest. We attach the settlement, entitled *Settlement Agreement and Corrective Action Plan of Pacific Gas and Electric Company*, to today's decision as Appendix A. Organizationally, the comprehensive settlement consists of text numbering pages 1-21, signatory pages 22-23, and five attachments:

Attachment 1, Summary of Where SED Conclusions and Recommendations are Addressed in the Settlement Agreement; Attachment 2, PG&E Contractor Safety Standard; Attachment 3, PG&E Contractor Safety Program Standard Contract Requirements; Attachment 4, PG&E Enterprise Causal Evaluation Standard; and Attachment 5, Settlement Agreement Action Items and Due Dates.

The settlement is built upon PG&E's acknowledgement that established law, as set forth in *Snyder v SCE*, 44 Cal.2d 793, 799-801 (1955), prohibits it from delegating to an independent contractor responsibility for compliance with Commission safety rules and regulations governing activities that are a necessary part of its business as an owner and operator of utility facilities. There is no dispute that PG&E hired Cleveland Wrecking Company (Cleveland) to demolish the Kern Power Plant or that the tragic accident occurred. PG&E admits it lacked expertise in power plant demolition and therefore sought to transfer primary responsibility for safety and safety oversight to Cleveland. Among other things,

PG&E also admits it did not verify the safety data provided by the contractor (the data was inaccurate) and its on-site representative did not have formal training in safety management and risk assessment. Moreover, following the accident, PG&E failed to promptly initiate its own root cause analysis. In December 2012 PG&E hired Bureau Veritas to conduct a root cause analysis of the incident and in March 2013 PG&E provided that report to SED.

The settlement provisions include forward-looking, enterprise-wide reforms, collectively termed a Corrective Action Plan, together with shareholder-financed penalties for the past events that gave rise to this OIL. The shareholder penalties, totaling \$5,569,313, consist of fines and ratemaking disallowances; we discuss the penalties further, below. The Corrective Action Plan includes a Contractor Safety Program and an Enterprise Causal Evaluation Standard, both described in great detail in the settlement and summarized below. In the parties' view, the Corrective Action Plan "will significantly improve the way PG&E manages contractor safety across the company" and will ensure thorough investigation of any serious safety incidents that do occur, as well as appropriate corrective actions, "to significantly reduce the risk of similar incidents in the future." (February 11 Joint Motion at 2.) The parties agree that all of these remedies appropriately address the three conclusions<sup>4</sup> and eleven recommendations<sup>5</sup> in the ESRB Report.

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<sup>4</sup> Section 7 of the ESRB Report sets out ESRB's three conclusions:

- 7.1 PG&E failed to actively manage and oversee work performed by contractors, accept responsibility for work conducted on PG&E facilities, review contractor work plans, and ensure the safety of workers at the jobsite. (Exhibit ESRB-1 at 9.)

*Footnote continued on next page*



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- 7.2 PG&E failed to adequately evaluate and rank contractor qualifications, including the contractors' own safety data and programs. (Exhibit ESRB-1 at 10.)
  - 7.3 PG&E failed to conduct and submit a timely and comprehensive root cause analysis to ESRB. (Exhibit ESRB-1 at 11.)

<sup>5</sup> Section 8 of the ESRB Report makes the following eleven recommendations:

1. PG&E should submit to ESRB, and implement, a corrective action plan to address not only the recommendations below, but also the deficiencies described in the Conclusions, Section 7 of this report.
2. PG&E should accept and acknowledge responsibility for work activities performed on PG&E-owned and/or operated facilities, whether PG&E employees or contractors perform the work.
3. PG&E should change its procedures to encourage and support thorough investigations, routinize root cause analysis and implement effective corrective actions before directed to do so by ESRB or the CPUC.
4. PG&E should shift its safety approach from one where litigation risks impede data collection and dissemination. Abundant and accessible data is critical to risk assessment and mitigation activities.
5. PG&E should develop mechanisms to share safety incident data and lessons learned from root cause analyses and incident investigations across PG&E's Lines of Business.
6. PG&E should conduct a risk assessment of all work plans, including revisions, for hazards, risks and necessary mitigations. The PG&E staff or team selected to do this must be qualified to perform such work and should make use of experts as appropriate.
7. PG&E should require contractors to provide an onsite safety officer for significant projects, one that is formally trained in safety management and risk assessment to provide adequate oversight. PG&E should evaluate the training qualifications of those officers.
8. PG&E should provide a trained PG&E onsite safety officer, formally trained in safety management and risk assessment, to provide oversight for all significant projects.
9. PG&E should revise its contractor program to require that in the event of an incident, bidders agree to fully engage contractor staff in PG&E's root cause analysis efforts to identify improvements to PG&E contractor management and other programs to reduce the likelihood of similar incidents in the future.

*Footnote continued on next page*

The parties describe the comprehensive Corrective Action Plan developed in this docket as advancing “industry leading, enterprise-wide safety programs.” (February 11 Joint Motion at 22.) Though the settlement does not concern the 2013 incident at the Kern Power Plant referenced in footnote 2 of today’s decision, section 2.5 of the settlement indicates implementation of the Corrective Action Plan may resolve many of the issues stemming from that accident. SED’s forthcoming report on the 2013 incident (outside of this docket) will recommend how that incident should be resolved.

#### **4.2. Settlement Components**

##### **4.2.1. Corrective Action Plan’s Contractor Safety Program**

Section 2.2 of the settlement requires PG&E to implement a Contractor Safety Standard. As noted previously, Attachment 2 to the settlement contains the current form of the Contractor Safety Standard. The settlement states that if PG&E properly implements and maintains the Contractor Safety Standard, then “this element of the overall Corrective Action Plan will resolve SED’s associated conclusions and recommendations in its Investigation Report.” (Appendix A at 12 [Settlement, section 2.2(f)].)

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10. PG&E should ensure that its employees receive adequate root cause analysis training to ensure implementation of an effective and comprehensive root cause analysis program, one that seeks to identify procedural or other changes to reduce safety risks. At minimum, PG&E should expand its root cause analysis training program to include all project management and safety staff. PG&E should also consider some level of training for front line staff who, because of their involvement in or knowledge of an incident, may contribute to the identification of improvements to reduce the likelihood of future incidents.
  11. PG&E should implement any other corrective actions needed to respond to the BV [Bureau Veritas] root cause analysis findings and recommendations. (Exhibit ESRB-1 at 13-14.)

The Contractor Safety Standard that includes the following five elements:

- Safety standards for pre-qualification of contractors. PG&E will evaluate and verify the safety records of contractors and subcontractors before hiring them for work of high and medium risk (these risk levels are defined in Appendix A to the Contractor Safety Standard). PG&E may use a third-party evaluator but acknowledges that it retains responsibility for the integrity and accuracy of the process. PG&E will provide quarterly status updates to SED until full implementation of the program at the end of 2016.
- Standard safety contract terms. PG&E will revise its standard contract terms to enhance the safety provisions for high and medium risk contracts. As specified in the settlement, the revised terms recognize the paramount importance of safety and more clearly and completely set out contractor obligations for training, inspection and insurance and for stopping work when necessary. The revised terms also specify PG&E's rights to designate additional safety precautions, stop work, terminate a contractor for compliance failures, review work plans, etc.
- Safety oversight of contractors. On an enterprise-wide basis and for all high or medium risk work, PG&E will develop contractor oversight procedures tailored to its specific business needs, will require contractors to provide a project-specific safety plan, and will specify the level of direct safety oversight. PG&E will audit implementation of the oversight procedures through periodic field observations and will provide the audit results to SED.
- Post-project safety evaluations. At the conclusion of contracts for high and medium risk work, PG&E will conduct post-project safety evaluations, flag problematic contractors, and incorporate all evaluations in future contract award decisions.

- PG&E's Safety, Health and Environment Department assessment and oversight. This PG&E department will assess and oversee implementation on an ongoing basis.
- Effective date. The Contactor Safety Standard in Attachment 2 to the settlement will become effective on the date that a Commission decision approving the settlement become final and non-appealable. PG&E must review the Contactor Safety Standard at least annually and may revise the standard within the terms of the settlement, at its discretion. PG&E will be responsible for full compliance with the settlement.

#### **4.2.2. Corrective Action Plan's Enterprise Casual Evaluation Standard**

Section 2.3 of the settlement requires PG&E to implement an Enterprise Causal Evaluation Standard, sometimes referred to as the Causal Evaluation Standard. As previously mentioned, Attachment 4 to the settlement contains the current form of the Causal Evaluation Standard. The settlement states that if PG&E properly implements and maintains the Causal Evaluation Standard, then "this element of the overall Corrective Action Plan will resolved SED's associated conclusions and recommendations in its Investigation Report." (Appendix A at 14 [Settlement, section 2.3(b)].)

The Causal Evaluation Standard has five objectives:

- Providing enterprise-wide guidance for evaluating the cause of serious safety incidents (including when to conduct an evaluation, what type to do, what people are necessary to the evaluation team, what evaluative methods should be used, a clear understanding of the evaluation's purpose, a process for meaningfully disseminating the results of the evaluation).
- Applying the evaluation standard to near-hit events.

- Developing a training plan for those people engaged in causal evaluations, including training on the fundamentals of causal evaluation.
- Developing detailed causal evaluation guidance tailored to each line of business within the broader enterprise of which PG&E is a part.<sup>6</sup>
- Establishing a Cross Functional Causal Evaluation Review Committee to review root cause evaluation reports on trends and performance. The committee also will validate compliance with the Enterprise Causal Evaluation Standard, identify areas for improvement.

#### **4.2.3. Shareholder Penalties**

The settlement includes fines tied to PG&E's identified and admitted failures, as well as penalties in the form of ratemaking adjustments, both to be borne by PG&E shareholders. The following chart lists each component of the total shareholder penalty.

<b>Issue</b>	<b>Ratemaking Adjustment</b>	<b>Fine</b>
Disallowance of Project Costs	\$344,313	\$0
Root Cause Issues	\$425,000	\$50,000
Contractor Oversight	\$1,500,000	\$2,200,000
Contractor Safety Program	\$1,000,000	\$50,000
Subtotal	\$3,269,313	\$2,300,000
<b>Total</b>	<b>\$5,569,313</b>	

(Appendix A at 18 [Settlement, section 2.4(d)].)

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<sup>6</sup> PG&E's lines of business comprise the following PG&E organizations: Electric Operations, Gas Operations, Nuclear, Information Technology, Customers Care and Safety and Shared Services. Power Generation is now part of Electric Operations.

Broadly, the root cause issues encompass ESRB's Conclusion 7.3, contractor oversight encompasses Conclusion 7.1, and contractor safety program encompasses Conclusion 7.2. The settlement's section 2.4 (see Appendix A at 14-18) recounts all of PG&E's admissions with respect to each of the three conclusions in the ESRB Report and we need not repeat them here. As noted above, PG&E expressly recognizes that in accordance with *Snyder v SCE, supra*, its safety responsibility is non-delegable.

In accordance with the penalty provisions, PG&E shareholders will provide funds totaling \$3,269,313 to offset Kern Power Plant decommissioning projects costs (these are the itemized ratemaking adjustments listed above) and will pay the itemized fines, totaling \$2,500,000, to the state Treasurer on behalf of the General Fund).

#### **4.2.4. BHP Community Legal's Concerns**

BHP Community Legal, in its motion for party status and its NOI, raised concerns focusing on sanctions and on subcontractor standards that should apply to future demolition of the Potrero Hill Power Plant in San Francisco. The assigned Commissioner's scoping memo observed that PG&E no longer owns that plant but directed the parties to meet to discuss BHP Community Legal's concerns in the context of any ongoing PG&E obligation or responsibility for the demolition of the Potrero Hill Power Plant. The parties' February 11 motion reports that this meeting did occur and that PG&E agreed to apply the Contractor Safety Program to all work for which it is responsible at both the Potrero Hill Power Plant and the Hunters Point Power Plant (also in San Francisco). As already noted, the settlement before us is an all-party settlement; BHP Community Legal is a signatory to the settlement and a proponent of the February 11 motion.

**4.3. Compliance with Rule 12.1(d)**

Rule 12.1(d) of the Commission's Rules applies whether settlements are contested, or like this one, uncontested. Therefore, as Rule 12.1(d) requires, we must assess this settlement against the record and applicable law and determine whether it is in the public interest. Because the settlement also imposes penalties on PG&E shareholders, including fines payable to the General Fund, in section 4.4 of today's decision we examine the proposed fines against the criteria set out in D.98-12-075.

Turning to Rule 12.1(d), we consider the record first, which includes the evidence provided by ESRB's Report (Exhibit ESRB-1). The Report specifies ESRB's factual basis for concluding PG&E bore responsibility for the incident in accordance with *Snyder v SCE*, *supra*, and other case law. The PG&E admissions recounted in the settlement substantially concede each of the ESRB Report's three conclusions. In addition to \$2,300,000 in fines, the settlement provides \$3,269,313 in ratemaking offsets to reimburse ratepayers for fuel tank demolition costs and to fund implementation of the Contractor Safety Program. Thus, the settlement attempts—successfully in our view—to develop balanced, record-based shareholder penalties that include meaningful financial sanctions as well as ratemaking adjustments to directly reduce costs to customers.

We have recognized previously that “[r]emediation measures are forward-looking and, if well-designed and properly implemented, can correct problems in order to minimize or prevent the risk that harm will recur.” (D.14-08-009 at 7.) That appears particularly apt here, where the parties' comprehensive efforts have resulted in a far-reaching Corrective Action Plan that will cause PG&E to implement two new policies, a Contractor Safety Program and an Enterprise Causal Evaluation Standard, to its business operations on a

company-wide basis. The settlement's Attachments 2, 3, and 4 contain fully developed standards to implement these policies; each of the standards will be reviewed regularly and revised as necessary going-forward. Attachment 5 summarizes all implementation deadlines. The three settling parties state: "The enterprise-wide Corrective Action Plan that will significantly change the way PG&E manages contractor safety at its job sites and investigates serious safety incidents." (February 11 Joint Motion at 1-2.)

The parties' February 11 joint motion, as supplemented by their April 10 amendment, is persuasive. We agree not only that PG&E's admissions support the proposed remediation measures and the penalties, but that given the uncertainties of litigation, both appear to be within the range of probable outcomes.

#### **4.4. Compliance with D.98-12-075**

Before reaching a final determination about whether the settlement should be approved, we must examine how it complies with the penalty criteria articulated in D.98-12-075. The parties' April 10 amendment to their joint motion contains a thorough discussion, which we review below and which persuades us that the settlement is consistent with D.98-12-075 and should be approved.

##### **4.4.1. Physical and Economic Harm**

The parties address these criteria together, given the close relationship between them. D.98-12-075 defines these criteria as follows:

- **Physical Harm** - The most severe violations are those that cause physical harm to people or property, with violations that threatened such harm closely following.



- **Economic Harm** - The severity of a violation increases with (i) the level of costs imposed on the victims of the violation; and (ii) the unlawful benefits gained by the public utility. Generally, the greater of these two amounts will be used in setting the fine. The fact that economic harm may be hard to quantify does not diminish the severity of the offense or the need for sanctions. (D.98-12-075, 84 CPUC 2d at 188-190.)

The 2012 incident at the Kern Power Plant resulted in the death of a worker. Though no civil claims were made against PG&E, the parties unreservedly state: “Due to the fatality, the severity of the physical harm and the level of costs imposed on the victim and his family are high.” (April 10 Amendment at 2.) The parties represent they are aware of no benefit to PG&E. Their settlement approach acknowledges PG&E’s admission that it did not prudently manage the demolition contract, puts new contracting standards in place, and assigns both ratemaking disallowances and fines to the contract oversight failure.

With respect to calculation of the \$2,200,000 fine, the parties state they did not assign a number of violations or days to the oversight failure. However, they note that given Pub. Util. Code § 2107’s maximum rate (\$50,000 per offense), the total contractor oversight penalty (ratemaking adjustment plus fine, for a total of \$3,700,000) is financially equivalent to levying a maximum rate penalty for approximately 74 days, which is three-quarters of the time period between contract execution and the accident. The ratemaking adjustment of \$344,313 quantifies the cost increases attributable to the several-month delay in completion of the demolition project because of the accident and assigns those costs to PG&E shareholders. The settlement also assigns to shareholders the estimated \$1,000,000 cost of implementing the Contractor Safety Program.

#### 4.4.2. Harm to the Regulatory Process

D.98-12-075 defines this criterion as:

- **Harm to the Regulatory Process** - A high level of severity will be accorded to violations of statutory or Commission directives, including violations of reporting or compliance requirements. (D.98-12-075, 84 CPUC 2d at 188-190.)

The parties point out that this incident, though extremely tragic, did not lead to allegations PG&E had violated Rule 1.1 or other ethical rules or had failed to meet established reporting or compliance requirements. PG&E admitted it had not promptly undertaken an independent root cause analysis, though no Commission-endorsed standard for completing one was operative at the time. For failure to undertake a timely root cause analysis, the settling parties agreed upon a combined shareholder penalty of \$475,000, with \$50,000 of that sum payable to the state's General Fund as a fine.

Again, the parties did not specify a number of violations or days to the root cause analysis failure. However, using Pub. Util. Code § 2107's maximum rate (\$50,000 per offense) as a measure, the total penalty for root cause issues is financially equivalent to levying a maximum rate penalty for 10 days, or alternatively, levying a penalty at the mid-point of the statutory range (\$25,000) for 19 days. The parties also point out that the new Causal Evaluation Standard in the settlement package establishes a goal for completing root cause evaluations where none existed – the goal is completion of the analysis within 90 days from the date of the incident.

#### 4.4.3. The Number and Scope of Violations

D.98-12-075 states:

- **Number and Scope of Violations** – A single violation is less severe than multiple offenses. A widespread violation that affects a large number of consumers is more severe than one that is limited in scope. For a continuing violation, Section 2108 counts each day as a separate offense. (D.98-12-075, 84 CPUC 2d at 188-190.)

This OII addresses a single incident at the Kern Power Plant in 2012. The 2013 incident is not at issue here, though the parties indicate that the broad scope of the company-wide reforms proposed here -- the Corrective Action Plan, consisting of both the Contractor Safety Program and the Enterprise Causal Evaluation Standard -- may influence future resolution of the 2013 incident. Further, PG&E has agreed as part of this settlement that the Contractor Safety Program will apply to its remaining work at Hunters Point Power Plant and at Potrero Hill Power Plant.

Thus, while the parties have not attempted to specify violations or offenses in this OII, their settlement proposes a comprehensive resolution of the OII that addresses all of ESRB's conclusions and recommendations.

#### 4.4.4. The Utility's Actions to Prevent, Detect, Disclose and Rectify a Violation, The Need for Deterrence and The Degree of Wrongdoing

The parties address the next five criteria together given the close relationship among them. D.98-12-075 defines these criteria as follows:

- **The Utility's Actions to Prevent a Violation** – Utilities are expected to take reasonable steps to ensure compliance with applicable laws and regulations. The utility's past record of compliance may be considered in assessing any penalty.

- **The Utility's Actions to Detect a Violation** - Utilities are expected to diligently monitor their activities. Deliberate, as opposed to inadvertent wrongdoing, will be considered an aggravating factor. The level and extent of management's involvement in, or tolerance of, the offense will be considered in determining the amount of any penalty.
- **The Utility's Actions to Disclose and Rectify a Violation** - Utilities are expected to promptly bring a violation to the Commission's attention. What constitutes "prompt" will depend on circumstances. Steps taken by a utility to promptly and cooperatively report and correct violations may be considered in assessing any penalty.
- **Need for Deterrence** - Fines should be set at a level that deters future violations. Effective deterrence requires that the size of a fine reflect the financial resources of the utility. (D.98-12-075, 84 CPUC 2d at 188-190.)
- **The Degree of Wrongdoing** - The Commission will review facts that tend to mitigate the degree of wrongdoing as well as facts that exacerbate the wrongdoing.

The settling parties discuss these criteria with reference to *Snyder v SCE, supra*. They acknowledge PG&E's admissions and its acceptance of accountability for failure to exercise adequate safety oversight following its own review of the incident, the analysis by Bureau Veritas and, the ESRB Report. The settlement takes no position on whether the worker fatality could have been avoided if PG&E had undertaken more effective safety oversight.

The parties underscore the importance of the Corrective Action Plan, which addresses all of ESRB's conclusions and recommendations and which will apply new contracting and incident evaluation policies, company-wide, to all PG&E lines of business. The parties point out that they paid great attention to

the assigned Commissioner's PHC remarks, which called for review of PG&E's contracting practices at an organizational level.

On balance, the parties contend, the penalties and the comprehensive corrective actions reasonably resolve this OII, given the resource demands of fully litigating it and the uncertainty of outcome inherent in all litigation. Each of the major components of the Corrective Action Plan – the Contractor Safety Program and the Enterprise Causal Evaluation Standard – are complete and ready to implement, once settlement approval is final.

#### **4.4.5. Constitutional Limit on Excessive Fines**

The parties state that this factor is not applicable here and we agree. By reaching this settlement, the settling parties concur that a total shareholder penalty of \$5,569,313 is not excessive.

#### **4.4.6. The Public Interest**

D.98-12-075 defines this criterion as follows:

- **The Public Interest** – In all cases, the harm will be evaluated from the perspective of the public interest.

The Commission provided the following guidance in D.13-09-028, which approved the SCE/SED settlement of the Malibu Canyon Fire:

The public interest is always considered in determining the size of a fine. Here, we accord great weight to SED's judgment that the settlement fine of \$20 million is in the public interest. SED is the public's representative in Commission safety enforcement proceedings. It has extensive experience with both litigated outcomes and negotiated settlements. SED is intimately familiar with the facts and circumstances of this case ... Moreover, it would undermine SED's ability to negotiate fines if the counterparty lacked confidence in the Commission's willingness to approve the negotiated fine. This situation would virtually guarantee that every

enforcement proceeding would be fully litigated, resulting in an inefficient use of scarce public resources. [¶] For the preceding reasons, we hesitate to second guess a fine negotiated by SED without good cause. We see no good cause here. (D.13-09-028 at 39-40.)

The settling parties argue persuasively that these considerations apply here. They underscore that ESRB, which is a part of SED, investigated the 2012 incident fully and prepared its report before settlement negotiations commenced. They also assert that the total penalty, including the fines payable to the General Fund, is based on a fair evaluation of the facts of this case, the resource demands and uncertainties of litigation, and the significant nature of the other remedies – the comprehensive corrective actions developed to govern future contracting and incident evaluation. The parties accurately observe that in approving other settlements that include negotiated penalties, the Commission has emphasized that the public interest is served by reducing the expense of litigation, conserving scarce Commission resources and allowing parties to eliminate the risk of an unfavorable litigated outcome. (*See for example, D.12-11-043 at 7, citing other precedent.*)

#### **4.4.7. Consistency with Precedent**

Footnote 3, above, references D.14-08-009, which approved two settlements between SED and SCE that resolved electrical equipment failures, one resulting in three fatalities and another resulting in property damage and great inconvenience to customers over a widespread area. The parties identify and briefly summarize seven other safety and enforcement settlements: D.13-09-028 (Malibu Canyon Fire – SCE/SED; D.13-09-026 (Malibu Canyon Fire – NextG Networks of California, Inc.); D.12-09-019 (Malibu Canyon Fire OII – Carrier Settlement); D.10-04-047 (Witch, Rice and Guejito Fires involving

San Diego Gas & Electric Company and Cox Communications); D.06-02-003 (PG&E Mission Substation Fire OII); D.04-04-065 (SCE Electric Line O&M Practices OII); and D.99-07-029 (PG&E Vegetation Management).

The settlements are diverse. Several resolved concerns arising from utility compliance problems that contributed to large power outages and none directly address *Snyder v SCE, supra*. As the parties observe, many of these precedents involved multiple incidents and clear violations of established general orders and Commission rules, including Rule 1.1, and the remedies approved are quite varied. The parties suggest that what is common about almost all of them is that they “include a mix of fines, shareholder funding of programs and/or cost disallowances, and remedial action plans” and thus, “demonstrate that such a packaging of measures is reasonable and in the public interest.” (April 10 Amendment at 11.) They continue:

The Settling Parties have placed great weight on the prospective safety benefits associated with the Contractor Safety Program and Enterprise Causal Evaluation Standard, as opposed to the deterrent effect of a larger fine, because these programs will establish new on-going performance standards that will become part of a more effective, on-going safety and compliance program at PG&E. SED will continue to monitor PG&E’s implementation of the programs under the settlement to ensure these safety benefits are realized.  
(*Id.*)

The settling parties focus, here, on corrective actions has been reasonable and highly productive. We commend the parties for working together, cooperatively, to foster meaningful change in PG&E’s approach to contracting and incident evaluation. Proper implementation of the new, forward-looking policies and procedures should reduce the risk of serious accidents in the future.

**4.5. Conclusion**

We should approve the settlement. After reviewing the settlement and the parties' support for its approval, we conclude that the settlement is reasonable in light of the record, consistent with law and precedent, and in the public interest. The shareholder-funded penalties of \$5,569,313, comprised of \$3,269,313 in ratemaking offsets and \$2,300,000 in fines, together with the new Corrective Action Plan for PG&E, which includes the Contractor Safety Program and Enterprise Causal Evaluation Standard, is a fair and reasonable resolution of this OII.

Today's decision is consistent with the Commission's longstanding policy favoring settlement in the public interest and reaffirms that Commission staff must have reasonable discretion to negotiate settlements when circumstances warrant. As we have counseled before, however, the settling parties must explain their rationale, and the public interest therein, for settling on the terms they then ask us to approve.

**5. Categorization and Need for Hearing**

The OII categorized this proceeding as adjudicatory and determined that hearings might be required. No hearings have been held and following the filing of the uncontested, all-party settlement, we find that no hearings are needed to resolve this proceeding equitably.

**6. Comments on Proposed Decision**

The proposed decision in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were filed.



**7. Assignment of Proceeding**

Michael Picker is the assigned Commissioner and Jean Vieth is the assigned ALJ in this proceeding.

**Findings of Fact**

1. The parties negotiated the settlements after SED had concluded its investigation and finalized its report about the 2012 Kern Power Plant incident.
2. The settlements are the product of good faith negotiations between the SED, PG&E and BHP Community Legal.
3. PG&E's admissions (recounted in the settlement) substantially concede each of the ESRB Report's three conclusions: PG&E admits it lacked expertise in power plant demolition and therefore sought to transfer primary responsibility for safety and safety oversight to Cleveland; PG&E admits it did not verify the safety data provided by the contractor (the data was inaccurate) and its on-site representative did not have formal training in safety management and risk assessment; PG&E admits it did not promptly initiate its own root cause analysis.
4. PG&E has accepted accountability for failure to exercise adequate safety oversight following its own review of the incident, the analysis by Bureau Veritas and, the ESRB Report.
5. The settlement takes no position on whether the worker fatality could have been avoided if PG&E had undertaken more effective safety oversight.
6. For the purposes of calculating the value of the shareholder penalties, including ratemaking offsets and fines, the parties did not specify a number of violations or days of violation for the contracting oversight and root cause analysis failures. However, the \$2,200,000 fine for contract oversight failure is financially equivalent to levying a maximum rate penalty under Pub. Util. Code § 2107 for approximately 74 days, which is three-quarters of the time period

between contract execution and the accident. The total penalty for the root cause analysis failure is financially equivalent to levying a maximum rate penalty under Pub. Util. Code § 2107 for approximately 10 days, or alternatively levying a penalty at the mid-point range for 19 days.

7. The Causal Evaluation Standard in the settlement package establishes a goal for completing a root cause evaluation where none existed; the goal is completion of the analysis within 90 days from the date of the incident.

8. Under the facts here, the parties' settlement efforts reasonably focused on developing a forward-looking Corrective Action Plan to improve safety at PG&E on a company-wide basis. The Contractor Safety Program and the Enterprise Causal Evaluation Standard are complete and ready to implement, once settlement approval is final.

9. Under the settlement, PG&E shareholders bear a total penalty of \$5,569,313, consisting of ratemaking adjustments of \$3,269,313 and a fine of \$2,300,000 payable to the state's General Fund. PG&E agrees to implement, on a company-wide basis, the new Corrective Action Plan, consisting of the PG&E Contractor Safety Standard (Attachment 2 to the settlement) and the PG&E Enterprise Causal Evaluation Standard (Attachment 4 to the settlement). The combined remedies offer significant value to redress the customer-impacts of the incident and to provide clear contracting and oversight policies and procedures going forward.

### **Conclusions of Law**

1. The penalty (ratemaking adjustments and fines), together with the corrective actions, are within the range of probable outcomes based on *Snyder v SCE, supra*, and Commission precedent and are consistent with Pub. Util. Code § 2107 and D.98-12-075.

2. The settlement should be approved as reasonable in light of the record, consistent with law and Commission precedent, and in the public interest, as required by Rule 12.1(d).

3. The uncontested *Motion of the Settling Parties for Approval of Settlement Agreement*, filed February 11, 2015, as amended by *Amendment to Motion of the Settling Parties for Approval of Settlement Agreement*, filed April 10, 2015, should be granted.

4. Hearings are not needed.

5. The following order should be effective immediately so that the benefits of the settlement agreement may be obtained expeditiously.

## **O R D E R**

### **IT IS ORDERED** that:

1. The settlement among the Safety and Enforcement Division, Pacific Gas and Electric Company and Bayview/Hunters Point Community Legal, attached to this order as Appendix A, is approved as reasonable in light of the record, consistent with law and Commission precedent, and in the public interest.

2. The *Motion of the Settling Parties for Approval of Settlement Agreement*, filed February 11, 2015, as amended by *Amendment to Motion of the Settling Parties for Approval of Settlement Agreement*, filed April 10, 2015, is granted.

3. As required under the settlement approved in Ordering Paragraph 1, Pacific Gas and Electric Company (PG&E) shall pay a fine totaling \$2,300,000 to the State of California General Fund within 30 days from the effective date of this order. Payment shall be made by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. PG&E

shall write on the face of the check or money order "For deposit to the State of California General Fund per Decision XX-YY-ZZZ" with "Decision XX-YY-ZZZ" being the Commission-designated number for today's decision.

4. All money received by the Commission's Fiscal Office pursuant to Ordering Paragraph 3 shall be deposited or transferred to the State of California General Fund as soon as practical.

5. Investigation 14-08-022 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.